

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

IN RE:)	
)	
GREGORY HUMBERS,)	CHAPTER 13 BANKRUPTCY
PAMELA H. HUMBERS,)	CASE NO. 94-50305
)	
DEBTORS)	

ORDER

The Debtors have filed a motion entitled Motion to Allow Settlement and To Retain Excess Proceeds. The motion alleges that this case was filed on June 25, 1994. At that time, the Debtors were asserting a claim against the Jamison Inn in behalf of their minor child, Patrick Humbers. The pendency of this suit was reported in response to question number 4 of the Statement of Financial Affairs.

Subsequent to confirmation of the case, Debtors entered into a settlement of the law suit for the sum of \$5,750.00. Debtors have proposed to permit the payment of attorney's fees in the amount of \$1,916.67 pursuant to the one-third contingency fee agreement entered into between the Debtors and Mr. J. Jeffrey Helms, prior to the beginning of the representation.

The Debtors' motion proposes to retain the proceeds of the settlement after payment of attorney's fees "for use with their son Patrick Humbers, the actual beneficiary of the settlement." The settlement check is payable to "Greg and Pamela Humbers, individually and as custodians of Patrick Humbers, and J.

Jeffrey Helms, their attorney."

The Debtors' Schedule F lists the following unsecured creditors which appear to be medical in nature:

Clinch Memorial Hospital	\$ 800.00
Dr. Fred Portwine	\$ 400.00
Dr. Martin Ritz	\$ 400.00
Roger Bates, MD	\$ 400.00
Satilla Regional Medical Center	\$5000.00
Waycross Anesthesia Associates	\$ 500.00

A hearing was held on the motion on June 21, 1995. At the hearing it was noted that the settlement check was made payable to the parents individually as noted above in this order. I requested a copy of the complaint so as to determine whether the allegations which were made in the original case set out a claim for payment of the medical expenses in behalf of the parents and/or the child. In response, the Debtors' attorney advised the Court by letter that the case was settled prior to litigation and that, consequently, no complaint was filed. In a letter dated July 10, 1995, from Mr. Helms to the Debtors' attorney, Mr. Helms contended as follows:

This money is meant purely to compensate young Patrick for the traumatic injury and experience he went through that evening at the Jamison Inn. I have not retained any money to pay any bills on behalf of Mr. and Mrs. Humbers for medical treatment for Patrick. Furthermore, no liens or guarantees have been made by me to any of the medical providers for payment of bills as this was not contemplated when we settled young Patrick's case.

In response to the Debtors' attorney's letter, the Court inquired further as to whether there were any medical expenses

incurred by the Debtors in this case and proposed for payment under this Chapter 13 plan. In reply, the Debtors' attorney provided a copy of a bill from Satilla Regional Medical Center which shows that the patient's name is Patrick Humbers and that the guarantor was Greg Humbers, one of the Debtors in this case. The bill indicates that a total of \$2,637.06 was billed to the patient. The letter from the Debtors' attorney states further that one of the unpaid medical bills is from Dr. Bates who was listed but failed to file a proof of claim. The listing of that debt is set out above in this order.

There is clearly a portion of the settlement which is reasonably allocated to compensate the minor child for the injury which was sustained. It is equally clear that a portion of the settlement should be allocated to the payment of the medical expenses incurred by the child as a consequence of the injury. There is absolutely no basis to conclude, as Mr. Helms does in his letter, that the money was meant "purely to compensate young Patrick for the traumatic injury and experience he went through...."

Accordingly, I must conclude that a portion of the settlement proceeds are property of this estate. Therefore, in view of the fact that the motion proposes to consider that none of the settlement proceeds are of such character, the motion should be denied. Of particular interest is the fact that the service of the Motion to Allow Settlement and to Retain Excess Proceeds did not include either Dr. Bates or the Satilla Regional Medical Center. Further, the Court's notice of hearing

does not appear to have included either one of those entities. Therefore, it is impossible to conclude that their failure to come forward and object to the motion represents any consent or agreement on their part.

It is necessary to come to a conclusion as to the division of these settlement proceeds. The motion was not advanced in such a way as to request this Court to enter an order providing for such an allocation. It simply requested authorization from the Court for the proceeds to be considered as property of the minor child and not as property of this estate. Having determined that the motion should be denied, it would be premature at this time to consider and decide the question of the allocation of the settlement proceeds. A hearing for that purpose will be scheduled with notice to all creditors in this case.

Now, therefore it is hereby

ORDERED that the Motion to Allow Settlement and Retain Excess Proceeds is hereby DENIED; and it is hereby further

ORDERED that a hearing to determine the allocation of proceeds will be held on September 21, 1995 at 9:00 a.m. in the United States Courtroom, Federal Building, Third Floor, Waycross, Georgia; and it is hereby further

ORDERED that a copy of this order be served on the Debtors, the Debtors' attorney, Mr. J. Jeffrey Helms, attorney at law, the U.S. Trustee, the Chapter 13 Trustee and all of the listed unsecured creditors including specifically Satilla Regional Medical Center and Dr. Roger Bates.

SO ORDERED this 14th day of August, 1995.

JAMES D. WALKER, JR., Judge
United States Bankruptcy Court